

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
June 25, 2008

LEGEND:

Fund =

Accounting Firm =

Administrator =

Year 1 =

Year 2 =

Corporation A =

Corporation B =

Corporation C =

Corporation D =

Corporation E =

Country A =

Country B =

Country C =

Country D =

Country E =

Date 1 =

Date 2 =

Date 3 =

Date 4 =
Date 5 =
Date 6 =
Date 7 =

Dear :

This responds to a letter dated April 3, 2007, and subsequent correspondence submitted on behalf of Fund requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (1) to make elections under sections 853(a), 855(a), and 1296 of the Internal Revenue Code (Code) and sections 1.853-4(a), 1.855-1(b), and 1.1296-1(h) of the Income Tax Regulations (Regulations) for its tax year ended Date 1, and (2) to make an election under section 853 of the Code and 1.853-4(a) of the Regulations for its tax year ended Date 2.

FACTS

Fund is a U.S. business trust registered under the Investment Company Act of 1940 that elected in years prior to its tax year ended Date 1 to be treated as a regulated investment company (RIC) under Subchapter M, Part 1 (sections 851-855) of the Code.

Year 1

For its tax year ended Date 1, Fund timely filed Form 7004, *Application for Automatic 6-Month Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, to extend the due date of its Form 1120-RIC, *U.S. Income Tax Return for Regulated Investment Companies*, to Date 3. When the Form 1120-RIC was filed, included on that form, on Schedule A, were dividends of investment company taxable income declared prior to the extended Form 1120-RIC due date for the taxable year to be distributed by 12-months following the tax year end. Schedule A also included the amount of foreign taxes passed through as an addition to Fund's dividend paid deduction. The Form 1120-RIC also included Form 1118, *Foreign Tax Credit-Corporations*, modified to support the Fund's section 853 election.

Additionally, during Year 1, Fund held stock in Corporation A, Corporation B, Corporation C, Corporation D, and Corporation E, which corporations are organized under the laws of Country A, Country B, Country C, Country D, and Country E, respectively. Each of these corporations is a passive foreign investment company (PFIC) within the meaning of section 1297. As Fund intended to make a mark to market election under section 1296, Fund attached to its Year 1 Form 1120-RIC a Form 8621, *Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*, for each company.

For its tax year ended Date 1, Fund engaged Accounting Firm to provide tax consulting and tax preparation services. On Date 3, Fund received its Form 1120-RIC and attachments from Accounting Firm, reviewed the return, signed the return, prepared the necessary mailing materials and promptly hand-delivered the package to Fund's mailroom with instructions to deliver the parcel to the U.S. Postal Service that day. However, the mailroom personnel failed to deliver the package to the U.S. Postal Service until Date 4.

Year 2

For its tax year ended Date 2, Fund intended to file a Form 7004. Fund's tax preparer, Accounting Firm, was engaged to prepare required extensions and transmit them to Administrator for review and filing with the taxing authorities. In addition to Accounting Firm preparing and transmitting required extensions, Administrator has its own internal system for tracking the due dates for the fund complex.

The due date for filing the Form 7004 associated with Fund's Form 1120-RIC for its tax year ended Date 2, was Date 5. The Accounting Firm employee who normally kept the tax return due date list for the fund complex left the employment of Accounting Firm and, during the transition to a replacement employee, the preparation of the Form 7004 was overlooked. At this time, a new employee of Administrator was assuming the monitoring of extension and tax return filings and did not note the due date of this return. As a result, Administrator did not detect the failure of Accounting Firm to provide the required Form 7004 until the period for filing the Form 7004 expired. When the new Accounting Firm employee discovered the expired deadline, the Form 7004 was prepared and transmitted to Administrator. Administrator filed the Form 7004 on or about Date 6.

Fund's extension request was denied by the Internal Revenue Service (Service) Service Center. In its denial of the extension, the Service notified Administrator of the untimely filing of Fund's Year 1 Form 1120-RIC. Fund filed Form 1120-RIC for its tax year ended Date 2 on or about Date 7.

As a result of Fund's failure to timely file Form 7004 for its tax year ended Date 2, Fund's election under sections 853 of the Code and 1.853-4(a) of the Regulations for its tax year ended Date 2 could not be timely filed. As a result of Fund's late filing of its Year 1 Form 1120-RIC, Fund's elections under sections 853, 855, and 1296 of the Code and sections 1.853-4(a), 1.855-1(b) and 1.1296-1(h) of the Regulations, respectively, for its tax year ended Date 1 were not timely filed.

Fund seeks relief under section 301.9100-1 of the Procedure and Administration Regulations (1) for an extension of time to make elections under sections 853, 855, and 1296 of the Code and under sections 1.853-4(a), 1.855-1(b) and 1.1296-1(h) of the Regulations, respectively, for its tax year ended Date 1 and (2) for an extension of time

to make its election under section 853 of the Code and section 1.853-4(a) of the Regulations for its tax year ended Date 2.

Fund makes the following additional representations for each election:

1. The request for relief was filed by Fund before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Fund having a lower tax liability in the aggregate for all years to which the regulatory election applies than Fund would have had if the election had been timely made (taking into account the time value of money).
3. Fund did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Fund requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Fund did not choose to not file the election.

LAW AND ANALYSIS

Section 853(a) provides that if more than 50 percent of the value (as defined in section 851(c)(4)) of a RIC's assets at the close of the taxable year consist of stock or securities in foreign corporations, and the RIC meets the requirements of section 852(a) for the taxable year, the RIC may elect to have its shareholders treated as if they had paid their proportionate share of certain foreign taxes paid by the RIC.

Section 853(c) provides that the amount to be treated by the shareholder, for purposes of section 853(b)(2), as his proportionate share of taxes paid to any foreign country or possession of the United States, and gross income derived from sources within any foreign country or possession of the United States, shall not exceed the amounts so designated by the RIC in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year.

Section 1.853-4 of the Regulations provides the manner in which a RIC makes an election under section 853. An election under section 853 must be made not later than the time prescribed for filing the return (including extensions thereof), and is irrevocable with respect to the dividend (or portion thereof), and the foreign taxes paid with respect thereto, to which the election applies.

Section 855(a) of the Code provides, in part, that if a RIC declares a dividend prior to the time prescribed by law for the filing of its return for a tax year (including the period of any extension of time granted for filing such return), and distributes the

amount of the dividend to shareholders in the 12-month period following the close of such tax year and not later than the date of the first regular dividend payment made after the declaration, the amount so declared and distributed shall, to the extent the RIC elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such tax year, except as provided otherwise by section 855.

Section 1.855-1(b)(1) provides that a section 855(a) election must be made in the return filed by the company for the tax years. The election should be made by the taxpayer by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the tax years in computing its investment company taxable income, or if the dividend (or portion thereof) to which such election applies is to be designated by the company as a capital gain dividend, in computing the amount of capital gain dividends paid during such tax year. After the time for filing the return for the tax years for which an election is made under section 855(a), the election is irrevocable.

Section 1296(a) provides that, in the case of marketable stock in a passive foreign investment company that is owned by a United States person at the close of any taxable year of such person, the person may elect to include in gross income the excess of the fair market value of the stock over its adjusted basis.

Section 1.1296-1(h) provides that an election under section 1296 for a taxable year must be made on or before the due date (including extensions) of the person's U.S. income tax return for that year.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) set forth rules the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii), of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all tax years to which the regulatory election

applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

HOLDING

Based on the facts and representations submitted, we conclude that Fund has satisfied the requirements for our granting a reasonable extension of time to allow it to make its election under section 853 for its tax year ended Date 1, its election under section 853 for its tax year ended Date 2, its election under section 855(a) for its tax year ended Date 1, and its election under section 1296 for its tax year ended Date 1. Accordingly, Fund's income tax return for its tax year ended Date 1, which was mailed on Date 4 and contained elections under sections 853, 855(a), and 1296, is treated as timely filed for purposes of making those elections, and Fund's income tax return for its tax year ended Date 2, which was filed on or about Date 7 and contained an election under section 853, is treated as timely filed for purposes of making that election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

No opinion is expressed with regard to whether the tax liability of Fund is not lower in the aggregate for all years to which each election applies than such tax liability would have been if each election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Sincerely,

Alice M. Bennett
Chief, Branch 3
Associate Chief Counsel
(Financial Institutions & Products)